

**Bucket Two: Mitigation and Adaptation SEPA IWG Work Plan**  
**Draft 3, 6/17/2008**

**Section 1: Brief Description of Mitigation and Adaptation Work Plan**

This work plan outlines the decisions that the SEPA IWG will make about how SEPA should be used by agencies and local governments to consider climate change mitigation and adaptation issues. This work plan also addresses the tools that should be used or developed by the SEPA IWG to accomplish this purpose. Public and private, project and non-project actions will all be considered.

In creating the mitigation and adaptation work plan, several gate-keeper decisions have been identified that need to be addressed as soon as possible to allow other decisions to be made. These include:

*Issues that are the focus of “Bucket One”, such as*

- Scoping of emissions and other actions which impact climate that should be attributed to SEPA actions

*Issues that should be collaboratively addressed, such as*

- Defining what constitutes a “significant” adverse environmental impact for purposes of triggering SEPA
- Defining the relationship between significance and mitigation and adaptation requirements

*Issues that are the focus of “Bucket Two”, such as*

- Determining if and how to address adaptation through SEPA
- Deciding what types of mitigation and adaptation requirements, if any, should be adopted

While the above issues are being addressed, the Mitigation and Adaptation Work Group has identified much work that can begin immediately, especially in terms of prioritizing the work outlined in this plan, identifying appropriate mitigation strategies, learning from the work of other jurisdictions, and considering how to address adaptation issues.

**Section 2: Key Policy Decisions for SEPA IWG**

**2.1 Big Picture/Groundwork<sup>1</sup>**

- Determine the degree that agencies and local governments should use SEPA substantive authority to address climate change impacts, including using substantive authority to condition or deny project or non-project actions
  - o Consider the amount of discretion that should be left to different agencies and local governments in making these determinations

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<sup>1</sup> The Mitigation and Adaptation SEPA IWG work group recognizes that there are many climate change initiatives, such as the cap and trade policies being discussed at the federal and regional level, which could impact the relevance of its recommendations. Due to tight time constraints and the speculative nature of considering the impact of these initiatives, they are not the focus of this work plan.

- Decide if different agencies and/or different types of project and non-project proponents (e.g. public vs. private) have different obligations to mitigate and adapt to climate change
- Consider whether different guidance needs to be developed for different localities due to differences in mitigation options and climate change vulnerabilities

## 2.2 Mitigation Scoping

- Define the linkage between a determination of significance or non-significance and mitigation requirements<sup>2</sup> (if an action is significant, is mitigation required?)
- Define whether to consider mitigation strictly in terms of substantive authority or whether to also look at mitigation within the context of a mitigated DNSs
- Determine at what threshold, if any, a project or non-project action must incorporate mitigation requirements
  - Options to consider to define the mitigation threshold include, but are not limited to:
    - No defined threshold
    - All actions subject to SEPA
    - Other thresholds such as:
      - Per capita GHG Emissions
      - Total GHG Emissions
      - Existing non-GHG related SEPA thresholds
  - Define, if appropriate, exemptions to mitigation requirements
- If mitigation is required, determine how much mitigation should be required (the compliance threshold)
  - Consider the role of DNSs, MDNSs, and EISs.
  - Consider the extent to which SEPA can or should be used to help meet the State's greenhouse gas reduction requirements

## 2.3 Mitigation Strategies

- Identify mitigation measures for project and non-project actions<sup>3</sup>
  - Identify existing programs and tools that should be endorsed as appropriate SEPA mitigation
    - E.g. programs such as green building standards, advanced energy codes and/or certain kinds of offsets and tools such as emissions software modeling programs and transportation emissions maps
  - Consider what work can be done by this group to identify other mitigation strategies
  - Decide whether to place a higher value on certain types of mitigation (i.e. avoided emissions versus offsets)
- Identify measures for ensuring that mitigation is effective

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<sup>2</sup> Defining issues of significance and mitigation requirements are issues that overlap and must be coordinated with the Bucket 1 work group

<sup>3</sup> The scope of factors that contribute to climate change (both emissions and other factors) and appropriately attributed to a SEPA action (work that is the focus of Bucket 1) will help define relevant mitigation strategies to be addressed by the Bucket 2 work group.

- Describe how to incorporate evolving information about the effectiveness of different strategies
- Determine the role of monitoring

#### 2.4 Adaptation Scoping

- Determine how climate change adaptation issues should be addressed under SEPA. Examples include:
  - the impacts of climate change on a project or non-project action
  - the impacts of a project or non-project action on a climate change stressed environment/system
- Determine whether adaptation considerations can be appropriately included as part of a cumulative effects/continuing effects analysis
- Determine at what threshold a project or non-project action must incorporate adaptation requirements
- If addressing adaptation is required, determine how adaptation should be addressed within the SEPA process (i.e., is it sufficient to simply discuss adaptation in the environmental documents or must adaptation considerations be incorporated into a project proposal)
- Define, if appropriate, exemptions to adaptation requirements--

#### 2.5 Adaptation Strategies

- Describe what science about the impacts of climate change is needed to appropriately address adaptation considerations
  - Determine the extent that this is available, and what information should be used. Related to this, describe:
    - Type of impacts to be considered
    - Timeframe of impacts analysis
    - Type of scenarios to consider (i.e. best or worst case?)
  - Determine whether additional information is necessary, and where it could come from

### **Section 3: Key Products to be Revised or Developed by the SEPA IWG**

#### 3.1 Guidance

- Options for mitigation and compliance thresholds (see section 2.2)
- Descriptions of GHG emissions reduction strategies for project and non-project actions (see section 2.3)
  - Guidance on the prioritization of types of mitigation strategies
- Options about how to appropriately address adaptation issues (see section 2.4)
- Description of availability and outline of science needed to address adaptation issues and recommendations on what information should be utilized (see section 2.5)
- Recommended plans to ensure the effectiveness of mitigation and adaptation strategies
- Recommendations for how to educate agencies and local governments on their responsibilities to consider climate change impacts as part of SEPA process

### 3.2 Tools

- Online guidance linked in an online checklist and sorted by project type and landscape
- Description of tools/resources available (or to be created) to identify mitigation and adaptation measures
  - o For example a standardized form that identifies/requires/recommends certain kinds of mitigation for project or non-project actions

### 3.3 Forms (e.g., revised SEPA checklist)

- Revised checklist guidance

### 3.4 Recommended Rule/Statutory Language Changes

- Recommend, if appropriate, changes to statutory language or rule changes that would require agencies and local governments to develop substantive SEPA policies, rules, or regulations related to climate change

## **Section 4: Related Existing SEPA Rules, Statutory language, Guidance and Other Resources** *(this section provided by WA DNR)*

### *Relevant Sections of RCW 43.21C State Environmental Policy Act and WAC 197-11 SEPA Rules*

SEPA recognizes climate and requires it to be analyzed.

RCW 43.21C State Environmental Policy Act

1. RCW 43.21C.010 (1), identifies one purpose of SEPA “to promote efforts which will prevent or eliminate damage to the environment and biosphere;”
2. RCW 43.21C.020:
  - Recognizes “...the profound impact of man’s activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource utilization and exploitation...”
  - Recognizes “...the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man....”
  - “...each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.”
  - SEPA requires all agencies of the state to act as trustee of the environment for succeeding generations, attain widest range of beneficial uses of the environment without undesirable and unintended consequences.
3. RCW 43.21C.030  
All branches of government (state and local agencies) must “utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which may have an impact on man’s environment.”

- (2)(c)(iv) Agencies must consider the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.
- (2) (f) Recognize the world-wide and long-range character of environmental problems, and where consistent with state policy, lend appropriate support to initiatives, resolutions and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment.

#### WAC 197-11 SEPA Rules

1. Requires agencies to conduct environmental analysis on their actions. Agencies may not take an action on a proposal until SEPA environmental analysis is completed.
2. WAC 197-11-704 defines the agency actions subject to environmental analysis under SEPA
  - Non-project actions include policies, plans, programs, ordinances, rules, and regulations.
  - Project actions include license, fund, and undertake an activity that directly modifies the environment; purchase, sell, lease, transfer, or exchange natural resources.
3. WAC 197-11-740. "Environment means, and is limited to, those elements listed in WAC 197-11-444...."
4. WAC 197-11-444. Elements of the Environment identifies Climate as an element of the environment
  - (1) Natural Environment
    - (a) Earth
    - (b) Air
      - (i) Air quality
      - (ii) Odor
      - (iii) Climate

#### **Roles of the environmental checklist, particularly as it relates to climate**

1. WAC 197-11-315. Requires agencies to use the environmental checklist in its current form to assist in making threshold determinations
2. WAC 197-11-960. The Environmental Checklist includes the questions:
  - B.2.a. What types of *emissions to the air* would result from the proposal (i.e. dust, *automobile*, odors, and *industrial wood smoke*) during construction and when the project is completed? If any, generally *describe and give approximate quantities* if known.
  - B.6.a. What kinds of *energy* (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.
  - B.9.i. Approximately *how many people would reside or work* in the completed project?

- B.9.l. Proposed measures to ensure the proposal is compatible with existing and project land uses and plans, if any:
- B.14.f. How many *vehicular trips per day* would be generated by the completed project? If known, indicate when peak volumes would occur.

Part D for non-project actions:

- 1. How would the proposal be likely to increase discharge to water; *emissions to air*; production, storage, or release of toxic or hazardous substances, or production of noise?
- 5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?
- 6. How would the proposal be likely to *increase demands on transportation* or public services and utilities?

### **SEPA identifies the types of impacts that must be analyzed**

- 1. WAC 197-11-448. "...an environmental impact statement analyzes *environmental* impacts and must be used by agency decision makers, along with other relevant considerations or documents, in making final decisions on a proposal."
- 2. WAC 197-11-752. "Impacts are the effects or consequences of actions. Environmental impacts are effects upon the elements of the environment listed in WAC 197-11-444."
- 3. WAC 197-11-792. Types of impacts for EISs include direct, indirect, or cumulative
- 4. WAC 197-11-655. "Relevant environmental documents, comments, and responses shall accompany proposals through existing agency review processes..."
- 5. As a form of mitigation, GMA jurisdictions may "accept" certain probable adverse environmental impacts if they have been identified in a plan, GMA planning process or SEPA process.

### **Agencies must act on the environmental information**

- 1. RCW 43.21C.030(2)
  - All branches of government (state and local agencies) must:
  - (a) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which may have an impact on man's environment."
  - (b) Identify and develop methods and procedures in consultation with the department of ecology and the ecological commission, which will insure that presently not quantified environmental amenities and values will be given appropriate consideration in decision making along with economical and technical considerations
- 2. WAC 197-11-655. "When a decision maker considers a final decision on a proposal, the alternatives in the relevant environmental documents shall be considered."

### **SEPA gives agencies supplemental authority to mitigate the identified environmental impacts**

WAC 197-11-660 Substantive Authority. “Any governmental action on public or private proposals that are not exempt may be conditioned or denied under SEPA to mitigate the environmental impact subject to the following limitations...”

## **Section 5: Related Decisions and Resources from Other States and Localities**

### **5.1 Massachusetts Environmental Policy Act (MEPA) and Climate Change**

MEPA Greenhouse gas emissions Policy and Protocol. Effective 10/31/07.

Available:

<http://www.mass.gov/envir/mepa/pdffiles/misc/GHG%20Policy%20FINAL.pdf>

Response to Comments Received on the MEPA Draft Greenhouse Gas Policy and Protocol. Available:

[http://www.mass.gov/envir/mepa/pdffiles/misc/GHG\\_response\\_comments\\_102207.pdf](http://www.mass.gov/envir/mepa/pdffiles/misc/GHG_response_comments_102207.pdf)

MEPA Project Review Thresholds. (*The MEPA GHG Policy applies only to projects that are required to submit an Environmental Notification Form (ENF) and a mandatory Environmental Impact Report (EIR) AND pass a variety of other screens (see the Policy and Protocol). This first level screen shows what type of projects in general are subject to the MEPA GHG Policy*). Available:

<http://www.mass.gov/envir/mepa/thirdlevelpages/thresholds.htm>

### **5.2 California Environmental Quality Act (CEQA) and Climate Change**

#### **Background**

California Senate Bill 97, Chapter 185. (CEQA and GHG emissions). Available:

[http://opr.ca.gov/ceqa/pdfs/SB\\_97\\_bill\\_20070824\\_chaptered.pdf](http://opr.ca.gov/ceqa/pdfs/SB_97_bill_20070824_chaptered.pdf)

CA Governor’s Office of Planning and Research, CEQA Guidelines and GHG Emissions. Available: <http://opr.ca.gov/index.php?a=ceqa/index.html>

CA Attorney General and CEQA. Available:

<http://ag.ca.gov/globalwarming/ceqa.php>

CA Attorney General’s Mitigation Measures. Available:

[http://ag.ca.gov/globalwarming/pdf/GW\\_mitigation\\_measures.pdf](http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf)

#### **CEQA Settlements**

San Bernadino and CA Attorney General Settlement. Available:

[http://opr.ca.gov/ceqa/pdfs/San\\_Bernardio\\_AG\\_settlement\\_agreement.pdf](http://opr.ca.gov/ceqa/pdfs/San_Bernardio_AG_settlement_agreement.pdf)

Discussion of San Bernadino settlement from Morrison and Foerster.

Available: <http://www.mofo.com/news/updates/files/12682.html>

Conoco Phillips and CA Attorney General Settlement. Available:  
[http://opr.ca.gov/ceqa/pdfs/Conoco\\_Phillips-AG\\_Final\\_Settlement\\_Agreement.pdf](http://opr.ca.gov/ceqa/pdfs/Conoco_Phillips-AG_Final_Settlement_Agreement.pdf)

Discussion of ConocoPhillips settlement from Paul Hastings.  
Available:  
[http://www.paulhastings.com/assets/publications/765.pdf?wt.mc\\_ID=765.pdf](http://www.paulhastings.com/assets/publications/765.pdf?wt.mc_ID=765.pdf)

Port of Los Angeles and Attorney General Agreement. Available:  
[http://ag.ca.gov/globalwarming/pdf/Port\\_of\\_Los\\_Angeles\\_Agreement.pdf](http://ag.ca.gov/globalwarming/pdf/Port_of_Los_Angeles_Agreement.pdf)

Great Valley Ethanol Settlement Agreement. Available:  
[http://ag.ca.gov/globalwarming/pdf/Great\\_Valley\\_Ethanol\\_Settlement.pdf](http://ag.ca.gov/globalwarming/pdf/Great_Valley_Ethanol_Settlement.pdf)

White Papers on setting CEQA Thresholds  
From the California Association of Environmental Professionals (AEP)  
Direct link:  
[http://www.califaep.org/userdocuments/File/AEP\\_Global\\_Climate\\_Change\\_June\\_29\\_Final.pdf](http://www.califaep.org/userdocuments/File/AEP_Global_Climate_Change_June_29_Final.pdf)  
See also: <http://www.califaep.org/content.asp?pid=81>

From Jones and Stokes, “The Climate Change Focus Group”  
Direct link:  
[http://climatechangeocusgroup.com/docs/JonesAndStokesClimateChangeCeqaNepa\\_Aug\\_2007.pdf](http://climatechangeocusgroup.com/docs/JonesAndStokesClimateChangeCeqaNepa_Aug_2007.pdf)  
See also: <http://climatechangeocusgroup.com/whitepaper.html>

From the California Air Pollution Officers Board (CAPCOA). CEQA and Climate Change.  
Direct Link:  
<http://www.capcoa.org/ceqa/?docID=ceqa&PHPSESSID=679285b752190224fe1df8cf485087e6>  
See also: <http://www.capcoa.org/>

### 5.3 King County SEPA Information

King County’s SEPA and Climate Change Policy (Executive Order PUT 7-10-1, Effective 10/15/07) Available:  
<http://www.kingcounty.gov/operations/policies/executive/utilitiesaeo/put7101aeo.aspx>

King County climate change and development regulations overview, DRAFT SEPA and Climate Change Ordinance, and SEPA GHG Emissions Worksheet.  
Available: <http://www.metrokc.gov/permits/info/site/ClimateChange.aspx>